IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.347 OF 1996

The State of Maharashtra) ... Appellant

Versus

1. Madhav Rambhaji Nagare)

2. Shivaji Madhav Nagare,)

3. Ratan Madhav Nagare)

4. Suresh Madhav Nagare,)
Occupation Agriculture, All)
Resident of Jalgaon, Taluka)
Niphad, District Nashik.) ... Respondents

Mr. Y.S. Shinde, A.P.P. for the appellant-State.

Mr. U.B. Nighot, advocate appointed, for the respondents-accused.

CORAM : SMT. RANJANA DESAI, J.

DATED : 29TH OCTOBER, 2007.

ORAL JUDGEMENT:-

1. The respondents (original accused 1 to 4) were tried in the court of Special Judge of Nashik at Nashik on Special Case No.18 of 1994 for offences punishable under sections 323, 504, 506 of

the Indian Penal Code (for short, “the IPC”), under section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and 7(1)(d) of the Protection of Civil Rights Act, 1955 read with section 34 of the IPC. By the impugned judgment and order, learned Special Judge acquitted the accused of the charges levelled against them and, hence, this appeal by the State of Maharashtra. For convenience, I shall refer to the parties as per their description in the trial.

2. It would be advantageous to give a gist of the facts of the prosecution case as discussed in the evidence of PW-1 Kamalabai Nirbhawane. PW-1 Kamalabai is the complainant. She owns land bearing Ghat No.154 at Jalgaon, Taluka Niphad. The land bearing Ghat No.153 belongs to the accused. It adjoins the land of PW-1 Kamalabai. There was a dispute between PW-1 Kamalabai and the accused on account of alleged encroachment made by the accused on the land of PW-1 Kamalabai.

3. Admittedly, various suits, R.T.S. appeals and chapter cases are pending between the two sides. The case of the prosecution is that PW-1 Kamalabai belongs to scheduled caste as she is a Hindu

Mahar by caste and the accused do not belong to any scheduled caste or scheduled tribe.

4. According to the prosecution on 26/5/1994 at about 10.00 a.m. PW-1 Kamalabai and her son Gautam were ploughing her land Gat No.154 by tractor. The accused were present in their land. Accused 1 Madhav asked her why she had broken the bund in between their lands. He abused PW-1 Kamalabai by her caste.

5. According to PW-1 Kamalabai, accused 1 told her that Mahars have no right to cultivate the land and they should pull dead cattle only. He caught her hand and pushed her down on the ground. According to PW-1 Kamalabai, the accused dealt fist and kick blows on various parts of her body. They also dealt stick blows on her. PW-3 Tatyaba rescued her. PW-1 Kamalabai then went to Niphad Police Station and lodged her complaint, which is at Ex-18. Offence being Crime No.43 of 1993 was registered by ASI Pandurang Nagare. He sent PW-1 Kamalabai to Rural Hospital, Niphad along with police yadi. He, thereafter, handed over the investigation to PSI Thombare. PSI Thombare completed the investigation and then filed charge sheet against the accused.

6. The charge was read over to the accused and explained to them. The accused pleaded not guilty to the charge and claimed to be tried. The defence of the accused was one of total denial.

7. After perusing the evidence on record, learned Special Judge acquitted the accused as aforesaid and, hence, this appeal by the State of Maharashtra.

8. I have heard, at some length, Mr. Shinde, learned A.P.P. appearing for the appellant-State in support of the appeal. He submitted that the impugned judgment and order is perverse and deserves to be set aside. He contended that the evidence of PW-1 Kamalabai is cogent and is supported by the evidence of PW-5 Dr. Ravindra Shingwe, who had examined her on the same day. Learned A.P.P. contended that the complainant had received injuries and this case of the prosecution is also supported by the medical certificate, which is at Ex-26. Learned A.P.P. submitted that even PW-3 Tatyaba has stated that accused 1 abused PW-1 Kamalabai by calling her “dhedpat”. He submitted that in the circumstances, learned Special Judge erred in acquitting the

accused. He urged that the judgment and order be set aside and the accused be convicted in accordance with law.

9. As against this, Mr. Nighot, learned advocate-appointed for the accused submitted that the impugned judgment and order is well reasoned and merits no interference form this court in this appeal against acquittal. He submitted that the view taken by learned Special Judge is a reasonably possible view and it should not be disturbed.

10. Admittedly, the relations between the accused and PW-1 Kamalabai are strained. Various cases are pending between the two. The dispute appears to be over the boundaries of the lands and the alleged encroachment made by the accused on the land of PW-1 Kamalabai. Evidence will have to be read against the background of this strained relationship.

11. No doubt, PW-1 Kamalabai has stated that on 26/5/1994, accused 1 called her Mahar and told her that she should not cultivate the land but must pull dead cattle. She has also stated that accused 1 pushed her and the accused dealt fist and kick

blows on her. There is also a certificate issued by PW-5 Dr. Shingwe , which indicates that some simple injuries were received by PW-1 Kamalabai. However, that the accused abused her by referring to her caste and they dealt fist and kick blows on her is not proved beyond reasonable doubt by the prosecution.

12. PW-3 Tatyaba is examined by the prosecution to lend corroboration to the evidence of PW-1 Kamalabai. PW-3 Tatyaba has stated that the accused and PW-1 Kamalabai were abusing each other. He has further stated that accused 1 abused PW-1 Kamalabai by saying Dhedpat and told her that she should drag dead cattle and should not cultivate land. But, he has further gone on to say that he had not seen the actual assault. He was cross-examined by the prosecutor after declaring him as a hostile witness. He was confronted with his police statement. He denied that he had stated before the police that the accused dealt fist and kick blows on PW-1 Kamalabai. It is clear, therefore, that this witness is not a witness of truth. If PW-1 Kamalabai had received injuries and the accused were responsible for it, then nothing prevented him from honestly stating so in the court. He is undoubtedly suppressing something. Besides, learned Special

Judge has after observing his demeanour stated that he did not find him to be a reliable and trustworthy witness. This observation made by learned Special Judge, who had occasion to observe the witness closely, will have to be given due weightage. It also appears that this witness does not have any land situated near the land of PW-1 Kamalabai and he had no occasion to go to the land of PW-1 Kamalabai on that day. Therefore, this witness is a chance witness. Against the background of the strained relationship, it is therefore, not possible for me to place implicit reliance on the evidence of this witness and hold that he provides necessary corroboration to the evidence of PW-1 Kamalabai.

13. Moreover, this is an appeal against the judgment and order of acquittal. The law in this behalf is very well settled. In ***State of Rajasthan v. Raja Ram (2003) 8 SCC 180,*** the Supreme Court has held that unless the judgment of the trial court is perverse, it cannot be interfered with in an appeal against acquittal. If the view taken by the trial court is a reasonably possible view, the order of acquittal cannot be interfered with because the presumption of innocence of the accused is further strengthened by acquittal and if

two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. An order of acquittal can be interfered with only when there are compelling and substantial reasons for doing so. However, if the view taken by the trial court is a reasonably possible view, it should not be interfered with.

14. Having read the evidence on record in the light of the above judgment of the Supreme Court, I am of the opinion that the view taken by learned Special Judge is a reasonably possible view which does not deserve to be interfered with in this appeal against acquittal. The appeal is dismissed.

[SMT. RANJANA DESAI, J.]